

Part 135/125 Aviation Rulemaking Committee Issue Paper

Issue: Part 135.25(b)(c) – Aircraft Requirements

Submitter: David Hewitt, NetJets, Inc.

Current Rule

§ 135.25(b)(c) Aircraft requirements.

- (b) Each certificate holder must have the exclusive use of at least one aircraft that meets the requirements for at least one kind of operation authorized in the certificate holder's operations specifications. In addition, for each kind of operation for which the certificate holder does not have the exclusive use of an aircraft, the certificate holder must have available for use under a written agreement (including arrangements for performing required maintenance) at least one aircraft that meets the requirements for that kind of operation. However, this paragraph does not prohibit the operator from using or authorizing the use of the aircraft for other than operations under this part and does not require the certificate holder to have exclusive use of all aircraft that the certificate holder uses.
- (c) For the purposes of paragraph (b) of this section, a person has exclusive use of an aircraft if that person has the sole possession, control, and use of it for flight, as owner, or has a written agreement (including arrangements for performing required maintenance), in effect when the aircraft is operated, giving the person that possession, control, and use for at least 6 consecutive months.

Reasons for Change

The FAA requirement for an “exclusive use” aircraft has been in existence since 1949. In July of 1981, the FAA removed the analogous requirement from Part 121 on the grounds that the rule was “an economic burden.....that cannot be justified on safety grounds”. From a Part 135 perspective, the rule has not kept pace with the aviation industry – particularly as the rule relates to an aircraft management company or fractional ownership company.¹ The rule continues to be a burden on the Part 135 industry that cannot be justified on safety grounds and the rule should be revised to remove the burden while addressing the historical concerns of the FAA.

The FAA has stated that the primary reason for the continued existence of this rule is that there was no suitable alternative to ensure that an operator did not become a “temporary” provider of charter services wherein their transient nature would decrease the ability of the FAA to properly monitor the operator resulting in a negative impact on safety. The FAA further reasoned that the rule is a “stable base for certification” while admitting that “other means undoubtedly exist to require the commitment” of an operator, but “no other method is in effect”. Therefore, the primary concern that must be addressed is that of commitment by the Part 135 operator.

¹ The FAA has recognized that aircraft management companies are unique in nature and, in Exemption 6158¹, relief was granted to an aircraft management company from the “exclusive use” requirement with certain conditions. The proposed change incorporates the relief granted in that exemption and imposes in part the restrictions contained in that exemption.

There are essentially three ways a Part 135 operator can secure an aircraft for use in charter operations: ownership, lease, or through a management agreement.

In the case of ownership or a lease, the aircraft is purchased or leased directly by the certificate holder for use in its operations. There is no question as to the commitment required with these methods and they meet the current requirements of the rule since these aircraft would be, by definition, in the sole possession, control, and use of the certificate holder for flight.

A management agreement is a vehicle in which the aircraft owner, by written agreement with the certificate holder, agrees to provide the aircraft for Part 135 operations when not being used by the owner for Part 91 operations. This is typically done to increase the utilization of the aircraft and to decrease overall operating expenses. In this instance, the aircraft is conformed and maintained in accordance with Part 135 and is listed in the certificate holder's operations specifications. In addition, the crewmembers are trained and checked in accordance with Part 135, and, when operated on a Part 135 flight, the aircraft is under the operational control of the certificate holder. This process involves significant commitment and financial investment by both the aircraft owner and the certificate holder, in addition to the investment of time to get an aircraft "on certificate".

The current rule allows that a certificate holder may meet the requirements of §135.25 (b) and (c) by means of a written agreement that provides for "sole possession, control, and use of it [an aircraft] for flight" for a period of at least 6 consecutive months. In the management agreement scenario, the aircraft is in the possession, control, and use of the certificate holder during a Part 135 flight. The only issue remaining is the necessity for "sole possession" of an aircraft and whether or not that is the true measure of commitment on the part of the certificate holder. Based on the arguments presented, it may be a measure of commitment, but not the only one. A management agreement of at least six consecutive months duration signifies the same level of commitment by the operator as an ownership or lease agreement. The risks of an operator being "temporary" are not any greater with a management agreement than with ownership or lease. In fact, one can argue that the easiest way to escape such commitments would be through ownership in that no other parties are involved – to escape one merely has to sell the aircraft. In lease and management agreements, third parties are involved that protect their interests if such agreements are terminated early – usually with significant financial penalties.

In addition to the changes proposed to encompass aircraft management companies, the rule should address the needs of the fractional aircraft companies that are Part 135 certificate holders as well. Part 91, subpart K contains numerous contractual requirements between the program manager and fractional owner. Recognizing the level of commitment established in that rule to become a program manager, there should be no requirement for an "exclusive use" aircraft for those certificate holders that are also program managers.

Proposed Change

§ 135.25 Aircraft requirements.

- (a) No change.
- (b) Each certificate holder must have the use of at least one aircraft through ownership, a lease for a minimum 6 consecutive month's duration, or a written agreement with another person that meets the requirements for their kind of operation as authorized in the certificate holder's operations specifications. The written agreement must:
 - (1) Be for a minimum 6 consecutive month's duration;
 - (2) Provide that the certificate holder has operational control of the aircraft at all times when operated under this part;
 - (3) Provide that the aircraft be maintained in accordance with this part at all times;
 - (4) Provide that the aircraft must be listed in the certificate holder's operations specifications;
 - (5) Provide that the aircraft cannot be listed in any other operations specifications of another Part 135 or Part 125 operator.
- (c) For the purposes of paragraph (b) of this section, the certificate holder must have available for use at least one aircraft that meets the requirements for each kind of operation authorized. However, this paragraph does not prohibit the operator from using or authorizing the use of the aircraft for other than operations under this part or Part 125 and does not require the certificate holder to meet the requirements of paragraph (b) for all aircraft that the certificate holder uses.
- (d) *[new subparagraph]* Paragraph (b) of this section does not apply to program managers as defined in Part 91, subpart K, that are also certificate holders under this part.
- (e) *[previous subparagraph (d)]* No change to existing rule.

Detailed Explanation of Proposed Changes

The proposed § 135.25(b) would be revised to require the certificate holder have access to at least one aircraft for its kind of operation. This access may be accomplished through direct ownership, a lease with a minimum six consecutive month term, or through a written agreement with another person (a management agreement). As discussed earlier, ownership and lease meet current requirements as to possession and control. To reflect the same level of commitment, the proposed rule would allow the operator to enter into a management agreement subject to certain conditions.

§ 135.25 (b)(1) would be revised to require the written agreement to be for a minimum six consecutive month period (as the case with a lease).

§ 135.25 (b)(2) would be revised to ensure that all parties involved understand that the aircraft would be under the operational control of the certificate holder at any time it is being operated under Part 135.

§ 135.25 (b)(3) would be revised to ensure that all parties involved understand that the aircraft would be maintained in accordance with Part 135 whether operated under Part 135 or Part 91.

§ 135.25 (b)(4) and (5) would be revised to ensure that all parties involved understand that the aircraft must be listed on the certificate holder's operations specifications and that it cannot be listed on any other operator's Part 135 operations specifications and, to ensure that there is no confusion regarding common vs. non-common carriage, that the aircraft cannot be listed on any Part 125 operations specifications.

§ 135.25 (c) would be revised to ensure that the certificate holder has access to at least one aircraft authorized for each type of operation authorized but clarifies that the requirements of subparagraph (b) do not apply to all the aircraft listed in the certificate holder's operations specifications.

§ 135.25 (d) would be revised to address the unique nature of program managers conducting fractional ownership programs under Part 91, subpart K.

§ 135.25 (e) would contain the verbiage of the current subparagraph (d).

Impact on Other Rules

No impact on other rules is anticipated. Revision to the guidance contained in FAA Order 8400.10 would be required.

Safety Implications

Safety should not be negatively impacted by the proposed change. The required level of commitment by an operator in the proposed rule is equivalent to that of the current rule.

Financial Considerations

No additional costs would be incurred by the FAA or Industry with the adoption of the proposed rule. However, adoption would provide for much needed financial relief for the Part 135 industry. Aircraft management companies are often forced to own or lease and maintain an aircraft that exists solely to meet the requirements contained in § 135.25. Fractional ownership companies are forced to own or lease and maintain a "core"² aircraft solely to meet the requirements contained in § 135.25. Exact figures vary due to the differing types of aircraft involved and further information can be provided at a future date.

Supporting Documentation

The following documentation is provided for reference:

Denial of Exemption	Exemption No. 3438	December 31, 1981
Grant of Exemption	Exemption No. 3438A	July 7, 1982
Grant of Exemption	Exemption No. 6158	September 11, 1995

Contact Information

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² A "core" aircraft is an aircraft the fractional provider solely owns or leases and has no fractional owners.

Exemption No. 3438

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, D.C. 20591

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In the matter of the petition of

EXECUTIVE AIR FLEET CORPORATION * Regulatory Docket No. 22270

for an exemption from Section

135.25 of the Federal Aviation

Regulations

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DENIAL OF EXEMPTION

By letter dated October 2, 1981, Mr. William B. Watt, Executive Air Fleet Corporation (EAF), 90 Moonachie Avenue, Teterboro, N.J. 07608, and J. W. Rosenthal, Esq., Attorney, of Ginsburg, Feldman, Weil and Bress, 1700 Pennsylvania Avenue, N.W., Washington, D.C. 20006, petitioned on behalf of EAF for an exemption from Section 135.25(b) and (c) of the Federal Aviation Regulations (FAR) to the extent necessary to allow petitioner to operate without having the exclusive use of at least one aircraft that meets the requirements for at least one kind of operation authorized in the certificate holder's operations specifications.

Section 135.25(b) provides, in pertinent part, that each certificate holder must have exclusive use of at least one aircraft that meets the requirements for at least one kind of operation authorized in the certificate holder's operations specifications. In addition, for each kind of operation for which the certificate holder does not have the exclusive use of an aircraft, the certificate holder must have available for use under a written agreement (including arrangements for performing required maintenance) at least one aircraft that meets the requirements for that kind of operation.

Section 135.25(c) provides, in pertinent part, that for the purpose of the previously mentioned paragraph, a person has exclusive use of an aircraft if that person has the sole possession, control, and use of it for flight, as owner, or has a written agreement (including arrangements for performing required maintenance), in effect when the aircraft is operated, giving the person that possession, control, and use for at least 6 consecutive months.

In support of its request, EAF states, in pertinent part: EAF is a Delaware corporation with its principal place of business at Teterboro Airport, Teterboro, New Jersey. EAF is an aircraft management firm which also holds a certificate and operations specifications issued under Part 135 and, among other things, conducts an air taxi charter operation under an exemption from the Civil Aeronautic Board (CAB) pursuant to Part 298 of the Board's Economic Regulations.

EAF's principal business is the performance of management and consulting services for clients who own executive jet aircraft. Those clients (hereinafter sometimes referred to as "owners") include corporations and individuals who use such aircraft for the transportation of their own corporate executives or themselves, as the case may be, and their guests. Under contracts between EAF and the owners, EAF performs a multitude of management advisory functions related to the owners' operation of such aircraft. These functions include aircraft maintenance and recordkeeping and the recruiting and training of flight crewmembers.

Several of EAF's present client-owners have determined that, in order to utilize their aircraft efficiently, it would be desirable to have such aircraft chartered to third parties from time to time. In order to accomplish this, EAF obtained the certificate and operations specifications referred to above.

Under its contracts with the owners, EAF has complete operational control of the aircraft when it is being operated under a charter and the owner has complete operational control (with management services performed by EAF) when the owner is using the aircraft for his own account. When EAF operates the aircraft, the operation is under Part 135; when the owner operates the aircraft, it is operated under either Part 91 or Part 125, depending on aircraft size.

On August 11, 1981, EAF filed a petition for rulemaking requesting that the Federal Aviation Administration (FAA) abolish the Part 135 exclusive-use requirement. This petition was published in the Federal Register on September 28, 1981 (46 FR 47465). In its petition, EAF relied on the FAA's abolition in July 1981 of the analogous exclusive-use rule of Part 121, on the basis that it was "an economic burden...that cannot be justified on safety grounds." EAF further pointed out that the situation with which exclusive-use rules were intended to deal--namely, the plethora of nonscheduled operators which emerged after World War II--no longer exists and that the Civil Aeronautics Board no longer has any enforcement interest in the area. Finally, EAF argued that the rule did not even accomplish its intended purpose since requiring each Part 135 operator to have the exclusive use

of one aircraft hardly constituted "positive control"-- the ostensible purpose of exclusive-use rules. In addition, EAF submitted a petition for exemption and feels that a grant of exemption is warranted due to the needless and wasteful economic burden imposed upon it by the rule and by the fact that aviation safety will not be adversely affected--indeed, will be advanced-- by the abolition of the rule.

Because its unique and highly respected timesharing and aircraft management business does not, of itself, give EAF the exclusive use of one aircraft, the company has been compelled to purchase, own, and maintain a single-engine Cessna 152 solely in order to satisfy Section 135.25.

A summary of petitioner's exemption request was published in the Federal Register on November 5, 1981 (46 FR 55051). One comment was received.

This commenter stated, in pertinent part:

This industry has been plagued with temporary operators who decide to help defray expenses on aircraft or provide employment for out-of-work pilots by getting into the air taxi business for short periods of time. Requiring that at least one aircraft be exclusively available for charter use is one means of requiring a commitment to the air taxi business that undoubtedly has prevented the existence of even more short-term air taxi operators.

The level of inspection and surveillance of someone in and out of the air taxi business over a short period of time cannot be as comprehensive as it is for the continuing, full-time operators the local FAA offices have dealt with over a period of time; hence, the possibility of a lower level of safety for those operators exists.

While other means undoubtedly exist to require the commitment mentioned above, no other method is currently in effect that would replace the aircraft requirement and, therefore, the requirements of Section 135.25(b) and (c) should not be deleted at this time.

Based upon a review of the facts presented and in light of the comment received, the FAA believes that the aircraft requirement in Part 135 provides a stable base for certification. At the present time, as many as 100 operators go out of business monthly, with about the same number applying for new certificates.

This aircraft requirement has been in existence since 1949, and the industry has voiced no objection to the rule. In the revision to Part 135 proposed in 1977, only a few comments were received requesting a change.

From a safety standpoint, the rule provides proper control over operations and maintenance for one aircraft. Executive Air Fleet Corporation argues that this does not accomplish that purpose. The FAA maintains that by requiring ownership or leasing of one aircraft, an applicant will hesitate before making application because it must commit itself to control one aircraft. Without such a commitment, the operator might be tempted to reduce aircraft maintenance and crew training and then sell or lease the aircraft before routine FAA surveillance reveals only possible irregularities. Such a situation is not in the public interest and could result in operations conducted at a reduced level of safety.

In consideration of the foregoing, I find that a grant of exemption is not in the public interest. Therefore, pursuant to the authority contained in Sections 313(a) and 601(c) of the Federal Aviation Act of 1958, delegated to me by the Administrator (14 CFR 11.53), the petition of Executive Air Fleet Corporation for an exemption from Section 135.25(b) and (c) of the Federal Aviation Regulations is hereby denied.

/s/ Kenneth S. Hunt
Director of
Flight Operations

Issued in Washington, D.C., on
December 31, 1981.

Exemption No. 3438A

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, D.C. 20591

* * * * *

In the matter of the petition of

EXECUTIVE AIR FLEET CORPORATION

for an exemption from Section

135.25(b) and (c) of the Federal

Aviation Regulations

* * * * *

* Regulatory Docket
* No. 22270

GRANT OF EXEMPTION

By letter dated February 2, 1982, Mr. William B. Watt, Executive Air Fleet Corporation (EAF), 90 Moonachie Avenue, Teterboro, N.J. 07608, and J. W. Rosenthal, Esq., Attorney, of Ginsburg, Feldman, Weil and Bress, 1700 Pennsylvania Avenue, N.W., Washington, D.C. 20006, petitioned for reconsideration of Denial of Exemption No. 3438 issued to EAF on December 31, 1981. EAF seeks an exemption from Section 135.25(b) and (c) of the Federal Aviation Regulations (FAR) to the extent necessary to allow petitioner to operate without having the exclusive use of at least one aircraft that meets the requirements for at least one kind of operation authorized in the certificate holder's operations specifications.

Sections of the FAR affected:

Section 135.25(b) provides, in pertinent part, that each certificate holder must have exclusive use of at least one aircraft that meets the requirements for at least one kind of operation authorized in the certificate holder's operations specifications. In addition, for each kind of operation for which the certificate holder does not have the exclusive use of an aircraft, the certificate holder must have available for use under a written agreement (including arrangements for performing required maintenance) at least one aircraft that meets the requirements for that kind of operation.

Section 135.25(c) provides, in pertinent part, that for the purpose of the previously mentioned paragraph, a person has exclusive use of an aircraft if that person has the sole possession, control, and use of it for flight, as owner, or has a written agreement (including arrangements for performing required maintenance), in effect when the aircraft is operated, giving the person that possession, control, and use for at least 6 consecutive months.

The petitioner's supportive information is as follows:

EAF stated in its original petition that it is a Delaware corporation with its principle place of business at Teterboro Airport, Teterboro, New Jersey. EAF is an aircraft management firm which also holds a certificate and operations specifications issued under Part 135 and, among other things, conducts an air taxi charter operation under an exemption from the Civil Aeronautics Board (CAB) pursuant to Part 298 of the Board's economic regulations.

EAF's principal business is the performance of management and consulting services for clients who own executive jet aircraft. Those clients include corporations and individuals who use such aircraft for the transportation of their own corporate executives or themselves, as the case may be, and their guests. Under contracts between EAF and the owners of these aircraft, EAF performs a multitude of management advisory functions related to the owners' operation of such aircraft. These functions include aircraft maintenance and recordkeeping and the recruiting and training of flight crewmembers.

Several of EAF's present client-owners have determined that, in order to utilize their aircraft efficiently, it would be desirable to have such aircraft chartered to third parties from time to time. In order to accomplish this, EAF obtained the certificate and operations specifications referred to above.

Under its contracts with the owners, EAF has complete operational control of the aircraft when it is being operated under a charter, and the owner has complete operational control (with management services performed by EAF) when the owner is using the aircraft for its own account. When EAF operates the aircraft, the operation is under Part 135; when the owner operates the aircraft, it is operated under Part 91 of the FAR.

Because its unique and highly respected timesharing and aircraft management business does not, of itself, give EAF the exclusive use of one aircraft, the company has been compelled to purchase, own, and maintain a single-engine Cessna 152 solely in order to satisfy Section 135.25.

In its recent petition, EAF states that it filed its original petition for exemption as a corollary to its earlier petition for rulemaking (46 FR 47465, September 28, 1981) to abolish the Part 135 exclusive-use requirement. EAF emphasized the irrelevance of Section 135.25 to the safety of its operation in view of its management contracts which provide for the continuous maintenance of all its managed aircraft under Part 135. In addition, EAF noted the outrageous economic waste which resulted from EAF's having to own and maintain a small airplane, which is never flown, simply to comply with the rule.

EAF states that the denial of exemption was erroneously based on a public comment opposing the petition for rulemaking and that the comment is not directed toward the individual situation which EAF cited in support of its request for exemption. Also, EAF states that the Federal Aviation Administration (FAA) failed to note that three favorable public comments were submitted to support its petition for rulemaking. EAF states the denial of exemption is fundamentally inadequate because the FAA failed to address EAF's unique aircraft management arrangements and that forcing EAF to own and maintain an aircraft which is never flown purely to comply with Section 135.25 is an outrageous economic waste. Accordingly, EAF strongly believes that a grant of exemption will result in an increase in aviation safety and a reduction in the economic burden of government regulation.

A summary of the EAF petition was published in the Federal Register (47 FR 8721, March 1, 1982), and no public comments were received.

The FAA analysis/summary is as follows:

The EAF petition for rulemaking is identified as Docket No. 22084. It is a separate rulemaking action under Part 11 of the FAR and should not have any direct bearing on this petition for exemption.

The FAA recognizes that EAF is unique with respect to its Part 135 operation. EAF is primarily responsible for performing management and consultant services for certain business aircraft owners. Among its contractual obligations, EAF performs aircraft maintenance and recordkeeping, and the recruiting and training of flight crewmembers. EAF has operational control of these business aircraft during charter flights conducted in accordance with its Part 135 certificate and operations specifications. The aircraft may be operated by EAF under Part 135 for a few days followed by a period of days during which the same aircraft is operated by the owner for private operations under Part 91.

The FAA finds that the uniqueness of the EAF operation warrants a grant of exemption subject to the condition that EAF shall not operate under Part 135 any U.S.-registered civil airplane which has a seating capacity of 20 or more passengers or a maximum payload capacity of 6,000 pounds or more, and used to conduct non-common carriage operations under Part 125. Section 125.11(b) states that no Part 125 certificate holder may conduct any operation which results directly or indirectly from any person's holding out to the public to furnish air transportation. Thus, to preclude any possible mixing of Part 135 common carriage operations with Part 125 non-common carriage operations for compensation and hire, the FAA finds that EAF may not operate, or list on its

Part 135 operations specifications, any airplane which is listed on the operations specifications of any Part 125 certificate holder. The FAA finds that this condition is necessary in the public interest to provide the highest level of safety for persons being transported by EAF under its Part 135 certificate and operations specifications.

In consideration of the foregoing, I find that a grant of exemption is in the public interest. Therefore, pursuant to the authority contained in Sections 313(a) and 601(c) of the Federal Aviation Act of 1958, delegated to me by the Administrator (14 CFR 11.53), Executive Air Fleet Corporation is granted an exemption from Section 135.25(b) and (c) of the FAR to the extent necessary to allow EAF to operate under Part 135 without having the exclusive use of at least one aircraft that meets the requirements for at least one kind of operation authorized in the EAF operations specifications subject to the condition that EAF shall not operate under Part 135 any airplane which:

1. Has a seating capacity of 20 or more passengers, or
2. Has a maximum payload capacity of 6,000 pounds or more, and
3. Is listed on any Part 125 operations specifications.

This exemption terminates on July 1, 1985, unless sooner superseded or rescinded.

/s/ Bernard A. Geier
Acting Director of Flight Operations

Issued in Washington, D.C., on July 7, 1982.

Exemption No. 6158

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC 20591

* * * * *

In the matter of the petition of

EXECUTIVE AIR FLEET, INC.

for an exemption from

Sections 135.25(b) and (c) of

Title 14, Code of Federal Regulations

* * * * *

Regulatory Docket
No. 28223

GRANT OF EXEMPTION

By letter dated May 1, 1995, Mr. Randolph M. Kennedy, Executive Vice President and Chief Operating Officer, Executive Air Fleet, Inc. (EAF), 90 Moonachie Avenue, Teterboro, New Jersey 07608, petitioned on behalf of EAF for an exemption from Sections 135.25(b) and (c) of Title 14, Code of Federal Regulations (14 CFR), to the extent necessary to permit EAF to operate its aircraft without having the exclusive use of at least one aircraft that meets the requirements for at least one kind of operation authorized by EAF's Operations Specifications.

The petitioner requests relief from the following regulations:

Section 135.25(b) prescribes, in pertinent part, that each certificate holder have the exclusive use of at least one aircraft that meets the requirements for at least one kind of operation authorized in the certificate holder's Operations Specifications. In addition, for each kind of operation for which the certificate holder does not have the exclusive use of an aircraft, the certificate holder must have available for use under a written agreement (including arrangements for performing required maintenance) at least one aircraft that meets the requirements for that kind of operation.

Section 135.25(c) prescribes, in pertinent part, that for the purposes of paragraph (b) of this section, a person have exclusive use of an aircraft if that person has the sole possession, control, and use of it for flight, as owner, or has a written agreement (including arrangements for performing required maintenance), in effect when the aircraft is operated, giving the person that possession, control, and use for at least 6 consecutive months.

The petitioner supports its request with the following information:

The petitioner states that it is a Delaware corporation and that its principal place of business is at Teterboro Airport, in Teterboro, New Jersey. The petitioner is a 14 CFR part 135 certificate holder, and its Operations Specifications permit it to conduct on-demand airplane and rotorcraft operations. The petitioner's principal business is the contractual placement of client-owners' aircraft on its operating certificate so that the aircraft can be chartered to third parties.

The petitioner states that under its contracts, it has complete operational control of an aircraft when the aircraft is being operated under charter. However, the owner of the aircraft has complete operational control when the owner is using the aircraft for its own account. The petitioner has complete maintenance control at all times because the Federal Aviation Regulations do not permit operators to alternate their operations between 14 CFR parts 91 and 135.

The petitioner states that the relief it now requests has previously been granted to EAF by the Federal Aviation Administration (FAA). The petitioner states that Exemption No. 3438, as amended, was issued to EAF on July 7, 1982 (Public Docket No. 22270). The petitioner states that it allowed this exemption to expire on June 30, 1989, due to changed business capabilities.

The petitioner states that since the expiration of Exemption No. 3438, as amended, it has purchased and maintained a single-engine Cessna 172 aircraft solely to comply with the requirements of the affected sections. The petitioner now requests a renewal of Exemption No. 3438, as amended, or a grant of a new exemption.

The petitioner states that the proposed exemption would be in the public interest because the Cessna 172 aircraft, which is never flown, is an economic waste because its only function is to comply with Section 135.25(b) and (c). The petitioner states that money spent on this aircraft could be allocated to more beneficial areas, such as safety and efficiency improvements, which the petitioner states would be in the public interest.

The petitioner states that if its proposed exemption were granted, safety would not be affected. The petitioner

believes that the safety justification for Section 135.25 is not relevant to its operations because its procedures for aircraft management provide a higher degree of safety than the implementation of that section. The petitioner also states that through its charter contracts, it has authority over the maintenance and equipment of all its clients' aircraft, and maintains them continuously in accordance with

the stringent provisions of part 135. Thus, the petitioner believes that its operations maintain a level of safety that is higher than that which is possible under the affected section.

A summary of this petition was published in the Federal Register on July 17, 1995 (60 FR 36454). No comments were received.

The FAA's analysis/summary is as follows:

Exemption No. 3438, as amended, was first issued to EAF on December 31, 1981, as a denial.

In that petition, EAF stated that it had also submitted a petition for rulemaking that would abolish the part 135 exclusive-use requirement. EAF's petition for rulemaking was published in the Federal Register on September 28, 1981 (46 FR 47465). In its petition, EAF relied on the FAA's abolition in July 1981, of the analogous exclusive-use rule of 14 CFR part 121 on the basis that it was an economic burden ... that cannot be justified on safety grounds. EAF further pointed out that the situations that exclusive use rules were intended to address (namely, the plethora of nonscheduled operators that emerged after World War II) no longer existed and that the Civil Aeronautics Board no longer had any enforcement interest in the area. The petitioner argued that the rule did not even accomplish its intended purpose because requiring each part 135 operator to have exclusive use of one aircraft hardly constituted "positive control" - the ostensible purpose of exclusive-use rules.

In support of its request for exemption, the petitioner further stated that its unique and highly respected timesharing and aircraft management business did not, of itself, give EAF the exclusive use of one aircraft. Therefore, the company had been compelled to purchase, own, and maintain a single-engine Cessna 152 solely in order to satisfy the requirements of Section 135.25.

A summary of EAF's petition for exemption was published in the Federal Register on November 5, 1981 (46 FR 55051). One comment was received. The commenter stated, in pertinent part, that the air taxi industry had been plagued with temporary operators who decided to help defray their aircraft expenses or provide employment for out-of-work

pilots by getting into the air taxi business for short periods of time. According to the commenter, requiring an air taxi operator to have at least one aircraft exclusively available for charter acted as a means of requiring commitment to the air taxi business, which undoubtedly has prevented the existence of greater numbers of short-term air taxi operators.

The level of inspection and surveillance of an operator temporarily in the air taxi business cannot be as comprehensive as it is for full-time operators with whom the local FAA offices have dealt with over a period of time. Therefore, the possibility exists that those operators will maintain a lower level of safety.

While other means undoubtedly exist to require the commitment mentioned above, the FAA notes that no other method is currently in effect that would replace the aircraft requirement. Therefore, the requirements of Section 135.25(b) and (c) should not be deleted at this time.

In issuing Denial of Exemption No. 3438, the FAA reviewed the facts presented and the comment received. The FAA found that the aircraft requirement in part 135 provides a stable base for certification. At that time, as many as 100 operators were going out of business monthly, with about the same number applying for new certificates.

The FAA stated that the exclusive-use aircraft requirement had been in existence since 1949, and that the industry had voiced no objection to the rule. In response to a proposal to revise part 135 in 1977, only a few of the commenters requested a change.

The FAA further stated that from a safety standpoint, the rule provided proper control over operations and maintenance for one aircraft. While the petitioner argued that this does not accomplish that purpose, the FAA maintained that by requesting ownership or lease of one aircraft, an applicant will hesitate before making an application because it must commit itself to controlling one aircraft. Without such a commitment, the operator might be tempted to reduce aircraft maintenance and crew training, and then sell or lease the aircraft before routine FAA surveillance reveals possible irregularities. Such a situation is not in the public interest and could result in operations conducted at a decreased level of safety.

On February 2, 1982, EAF petitioned for reconsideration of Denial of Exemption No. 3438. The petitioner stated that it filed its original petition for exemption as a corollary to its earlier petition for rulemaking to abolish the part 135 exclusive-use requirements. The petitioner stated that

Section 135.25 was irrelevant to the safety of its operations in view of its management contracts, which provide for the continuous maintenance of all its managed aircraft under part 135. In addition, the petitioner noted that an outrageous economic waste resulted from EAF's having to own and maintain a small airplane, which never was flown, simply to comply with the rule.

The petitioner stated that Denial of Exemption No. 3438 was erroneously based on a public comment opposing a petition for rulemaking, and that the comment was not directed toward the particular situation that the petitioner cited in support of its request for exemption. Also, the petitioner stated that the FAA failed to note that three favorable comments were submitted to support its petition for rulemaking. The petitioner stated that the denial of exemption was fundamentally inadequate because the FAA failed to address EAF's unique aircraft management arrangements and that forcing EAF to own and maintain an aircraft that never was flown purely to comply with Section 135.25 was an outrageous economic waste. EAF stated that, accordingly, a grant of exemption would result in an increase in aviation safety and a reduction in the economic burden of government regulation.

In response to EAF's petition for reconsideration, the FAA issued Grant of Exemption No. 3438A to the petitioner on July 7, 1982. The FAA found that the petitioner was unique with respect to its part 135 operation. This is because EAF was primarily responsible for performing management and consultant services for certain business aircraft owners. Among its contractual obligations, the petitioner performs aircraft maintenance and recordkeeping, as well as the recruiting and training of flight crewmembers. The petitioner had operational control of these business aircraft during charter flights conducted in accordance with its part 135 certificate and Operations Specifications. For example, the aircraft may be operated by EAF under part 135 for a few days, followed by a period of days during which the same aircraft is operated by the owner for private operations under part 91.

The FAA found that the uniqueness of EAF's operations warranted a grant of exemption subject to the condition that EAF should not operate under part 135 any U.S.-registered civil airplane which had a seating capacity of 20 or more passengers, or a payload capacity that exceeded 6,000 pounds, and was used to conduct non-common carriage operations under part 125. Section 125.11(b) states that no part 125 certificate holder may conduct any operation that results directly or indirectly from any persons' holding out to the public an offer to furnish air transportation. Thus, to preclude any possible mixing of part 135 common carriage operations with part 125 non-common carriage operations for

compensation and hire, the FAA found that the petitioner should not operate, or list on its part 135 Operations Specifications, any airplane which was listed on the Operations Specifications of any part 125 certificate holder. The FAA found that this condition was necessary in the public interest to provide the highest level of safety for persons being transported by the petitioner under its

part 135 certificate and Operations Specifications. Exemption Nos. 3438B and 3438C were issued as extensions, without any changes being made to the original exemption.

The FAA finds that, subject to conditions and limitations, the petitioner has operated successfully under Exemption No 3438, as amended. The FAA further finds that the reasons that warranted the previous grant of exemption continue to be valid and serve as the basis for a grant of exemption.

In consideration of the foregoing, I find that a grant of exemption is in the public interest. Therefore, pursuant to the authority contained in 49 U.S.C. Sections 40113 and 44701, formerly Sections 313(a) and 601(c) of the Federal Aviation Act of 1958, as amended, delegated to me by the Administrator (14 CFR Section 11.53), Executive Air Fleet, Inc., is hereby granted an exemption from 14 CFR Sections 135.25(b) and (c) to the extent necessary to allow EAF to operate under 14 CFR part 135, without having the exclusive use of at least one aircraft that meets the requirements for at least one kind of operation authorized by EAF's Operations Specifications. This exemption is subject to the following conditions. EAF shall not operate any airplane under part 135 which:

1. Has a seating capacity of 20 or more passengers, or
2. Has a payload capacity that exceeds 6,000 pounds, and
3. Is listed on any part 125 Operations Specifications.

This exemption terminates on August 31, 1997, unless sooner superseded or rescinded.

/s/ William J. White
Acting Director, Flight Standards Service

Issued in Washington, D.C. on September 11, 1995.